IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2764 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HG BUKHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2764 of 2002

MR SUNIL MEHTA form, MR SK BUKHARI for Petitioner No. 1

Ms. Reeta Chandarana, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 21/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has prayed for a mandamus directing the respondents to issue order for

fixing monthly pension of the petitioner by restoring one-third pension with effect from 13-5-2000. The case of the petitioner is that the petitioner is entitled to restoration of monthly pension as per the Government Circulars though the petitioner was permitted to commute 100% of his pension. The petitioner was absorbed in the G.S.F.C. from the Government Service on 13-5-1985. It is not in dispute that on account of certain Government Resolutions, the petitioner was entitled to pension from 13-5-1985 though he had not actually superannuated from service from G.S.F.C. It is also not in dispute that the petitioner was paid regular pension from 13-5-1985 onwards upto 20-6- 1989. On 20-6-1989, the petitioner as per his choice was permitted to commute 100% of his pension. Accordingly, the petitioner was paid a sum of Rs.1,43,577/- by the Government. On the basis of the Government Resolutions dated 23-4-1998 and 9-3-1999, the petitioner claims restoration of one-third of his pension upon completion of 15 years of his absorption in the G.S.F.C. i.e. after 15 years from 13-5-1985. He has, therefore, prayed that the respondents be directed to pay to him one-third pension with effect from 13-5-2000.

2. The respondents have filed an affidavit in which it is stated inter alia that the petitioner was paid full pension from 13-5-1985 to 20-6-1989 at the prevailing rates and he was allowed to commute 100% of his pension on 20-6-1989. It is further stated that the petitioner would be entitled to restoration of one-third of the pension only upon completion of 15 years from the date of commutation of pension and his pension could be restored only with effect from 20-6-2004 and not earlier.

3. Having considered the submissions made on behalf of the rival parties, it is clear that the Government Resolutions dated 23-4-1998 and 9-3-1999 portions of which are extracted at page 50 of the paper book provides for restoration of one-third of pension despite the employee earlier having opted for 100% commutation of pension upon completion of 15 years from the date of commutation or 1-4-1983 whichever is later. In this case, therefore, the petitioner cannot claim restoration of one-third of pension before completion of 15 years from the date when his pension was commuted. The contention of the learned Counsel for the petitioner that the respondents delayed the formalities which in turn resulted in commutation of pension being delayed and that, therefore, the pension of the petitioner should be restored after 15 years of his absorption in G.S.F.C. cannot be accepted. Obviously, the petitioner enjoyed full pension at the prevailing rate between 13-5-1985 to

20-6-1989. The Government Resolution also is amply clear and permits restoration of one-third pension upon completion of 15 years from the date of commutation of pension or after 1-4-1983 whichever is later. I do not find anything objectionable about the Government's stand, and therefore, the petition deserves to be, and is hereby dismissed.

(Akil Kureshi,J.)

stanley-ak.